

IN THE CROWN COURT SITTING AT BELFAST

—————
THE QUEEN

-v-

**STEPHEN PATRICK McKEE
PATRICK JAMES STEPHEN CROSSAN
N**

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BILL NO. 0/085227
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WEIR J

[1] Stephen McKee, Patrick Crossan and N, you have each pleaded guilty to a number of offences associated with the events surrounding the death of Mr Henry Holland. You McKee have pleaded guilty to his murder as well as to a number of, relatively speaking much less serious, charges relating to separate incidents that occurred prior to the violent events of the night Mr Holland was murdered. You have each pleaded not guilty to a number of other offences, including in the case of Crossan and N, that of murder and I have been informed by Mr Murphy QC for the prosecution that, after carefully considering the matter and scrupulously assessing the evidence, the prosecution decided that its proper response was to accept those pleas. Accordingly I proceed to deal with each of you solely on the basis of those pleas that you have made and which have been accepted by the prosecution in the exercise of its discretion.

[2] Before turning to deal with each of you I shall describe the factual background, so far as it is known, of the events surrounding the death of Mr Holland. On the evening of 11 September 2007 he had visited a local club where a quiz was being held. He was in the company of his brother Martin and a friend and he left around 11.30 to walk with the friend to his home at Norfolk Drive. Mr Holland parted from his friend who went for something to eat and walked on alone.

[3] At that time he had the great misfortune to encounter the three of you. You had for some hours been drinking in company with other young people

in the Ballymurphy area when the three of you and another teenage girl decided to set off across Falls Park and into Norfolk Parade. It appears that you McKee were jumping in and out of gardens looking into parked cars. N and the other girl walked on ahead to the Glen Road where they were again joined by McKee and Crossan and from there made their way into Norfolk Drive. It must have been just around this time that Mr Holland reached Norfolk Drive and it must be concluded that he saw the group acting suspiciously and decided to investigate by getting his van and driving up Norfolk Drive after them. It appears that the van drove past the group and that you McKee struck the van following which it stopped and Mr Holland got out and there followed a loud and abusive tirade from each of you. Norfolk Drive is a quiet residential area and the commotion alerted a number of residents, one of whom came out of his home to find a man who turned out to be McKee standing in the mouth of his driveway threatening to kill the driver of the van and moving in an aggressive and agitated manner.

[4] This neighbour, a man of mature years, was frightened by what he saw and heard and so went back into his house and looked from the window from where he could see that a group was surrounding the driver's door of the van. He courageously went out again bringing with him a child's hurley bat for protection and approached the van where he recognised the driver as Mr Holland. The two girls, one of which was you N, began screaming aggressively at this neighbour "who are you, what do you want?". At around this time the neighbour noticed that Crossan was brandishing a knife towards him and he called out to Mr Holland to alert him to this whilst waving his hurley bat to keep Crossan at bay. At this point Mr Holland appears to have opened his van door and was heard by the neighbour trying to reason with the group using words such as "I am an old age pensioner, I'm too old for this, we don't want any hassle now, calm down". But the group did not calm down. McKee turned his attention to Mr Holland as did N. As Mr Holland made to get back to the relative safety of the van N pushed the van door against him and following this McKee struck Mr Holland on the head. At first the neighbour thought this was a loud punch, but Mr Holland immediately collapsed upon the ground. While this was happening you Crossan continued your stand-off with the neighbour who was fending you off with the bat. Meanwhile the ongoing commotion had alerted other residents, some of whom began to emerge from their homes. Upon seeing this the group made off, pursued for a distance by other neighbours. When the first neighbour went to see to Mr Holland he found him unconscious with a screwdriver protruding from his head. An ambulance was summoned and Mr Holland brought to hospital but the screwdriver having penetrated his skull had caused catastrophic injury to the underlying brain which inevitably resulted in Mr Holland's death some 22 hours following his admission to hospital.

[5] Mr Holland was at the date of this fatal incident a man of 65 years who ran a local shop and was clearly very well known and much liked in his community. He was the head of close-knit family and extended family. In this case I have the considerable benefit of a detailed independent clinical psychology assessment report on Mr Holland's widow, Pauline, his daughters Sarah and Gail, his sister Geraldine and her partner Frank. It is an impressive report extending to some 18 closely-written pages and provides a detailed picture of the terrible effect which this wicked crime has had upon each of them. I am not going to set out here the detail of Dr Ferguson's report because it contains many matters of an acutely personal nature. The overall picture is of a family whose lives have been, as Mr Murphy QC rightly put it "shattered", and as he also correctly said the report provides an insight into the deep emotional and psychological impacts upon the family members which continue to ensue. Dr Ferguson has written of the need for Mrs Pauline Holland to receive professional counselling and I hope that the relevant authorities will arrange that and this is speedily provided for her. By your actions McKee you have destroyed this family's centre and with it its happiness and it is not at all clear, at least for some of the family members, that it will ever repair.

[6] I deal firstly with you McKee. On Count 1, the charge of murder there is only one sentence permitted by law namely that of detention during the pleasure of the Secretary of State in such place and under such conditions as the Secretary of State may direct which I therefore impose upon you. It is also my responsibility, in accordance with Article 5 of the Life Sentences (Northern Ireland) Order 2001, to determine the length of the minimum term that you will be required to serve before you will first become eligible to have your case referred to the Parole Commissioners for consideration by them as to whether, and if so when, you are thereafter to be released on licence. I make it clear however that if and when you are released on licence you will for the remainder of your life be liable to be recalled if at any time you do not comply with the terms of the licence.

[7] I wish further to make it clear to you and to the public that the minimum term is not the same as a fixed term of imprisonment. A prisoner sentenced to a fixed term may, if he is of good behaviour, attract remission of up to 50% of the term imposed by the court. You will receive no remission for any part of the minimum term that I am about to determine and you will spend not less than that period in custody before you are released. This is an important distinction that I hope the press reporting this case will not fail to make clear.

[8] You were 16½ years old at the time of this killing without any criminal convictions at that date although you were subsequently dealt with for offences of assault occasioning actual bodily harm, burglary of a dwelling, criminal damage and possession of a class C drug, all committed before the

events of this night. Because they were not previous convictions I do not take them into account against you but neither can I regard you as having been a person of good character on the night of the murder. You abandoned any interest in education at about the age of 13 and then drifted into an aimless and utterly wasteful lifestyle, hanging around at street corners with similarly unmotivated acquaintances and began to drink alcohol and experiment with drugs. It seems likely that you had taken both in significant measure on this night. You are not a person who could be said to have had a bad upbringing but you got beyond your parents' control. I regret to say that your history is a depressingly typical one in these courts. While you have been in custody awaiting trial you have used the time well and I have seen an impressive collection of certificates that you have received in a whole range of subjects, activities and skills. It is sad that it took such an extreme event as this to cause you to settle to gaining the qualifications needed for life. Dr McCartan, Chartered Clinical Psychologist, has carried out tests of your intellectual functioning that show your full scale IQ as being "borderline" and thus in the bottom 5% of the population. The probation officer considers that you are remorseful for what you did and reports that you have settled well in the Young Offenders' Centre and present no disciplinary problems there. The efforts you have made in education and training would seem to be confirmatory of a wish, late in the day though it be, to try to address the causes of your offending behaviour.

[9] My task is to specify the part of the sentence that is appropriate to satisfy the requirements of retribution and deterrence. Contrary to the apparent belief of some elements of the popular media, that is not a figure that the law permits me to pluck from the air. As Treacy J observed recently in the course of his sentencing remarks in R v Lewis and Others [2009] NICC 33, the correct approach to sentencing for murder is that approved by the Court of Appeal in R v McCandless and Others [2004] NI 1 and involves the application of the English Practice Statement on Life Sentences set out at [2002] 3 All ER 412. As Treacy J explained it "This practice directive provides detailed guidance for judges in sentencing persons guilty of murder and operates to ensure that people who are similarly culpable are comparably treated whoever sentences them and wherever they are sentenced." I respectfully agree with those observations and hope that it will be generally understood that this is the approach that the law expects, indeed requires, me to apply.

[10] In applying the principles of the Practice Statement I have considerable assistance from Senior Counsel for both prosecution and defence and there was a large measure of agreement between them in relation to the various elements. It was agreed that in this case there were no features that would make it other than a normal starting point case. As to aggravating features, the one that was identified by the prosecution and which Mr Gallagher QC agreed was a matter that could be put into the balance was the extreme effect

that this murder has had upon the deceased's family. In R v Michael Jason Smith [2008] NICC 34 Hart J expressed the view that, while the Practice Statement does not specifically identify this as an aggravating factor, "in principle where the circumstances surrounding the death of a loved one have had a particularly severe effect on a significant number of people, I can see no reason why that should not be regarded as an aggravating feature of the case". I respectfully agree with that view and add only that the examples of aggravating factors set out at paragraph 14 of the Practice Statement are not exhaustive as is clear from the use of the words "can include" before the examples given. Accordingly I propose to treat the extreme effect which this murder has had upon the members of the Holland family as a significantly aggravating feature in this case. No other such factor has been identified by the prosecution.

[11] By way of mitigating factors, Mr Gallagher QC contends that there are four. The first, which was accepted by the prosecution and seems from what we know to be plainly correct, is that this incident was spontaneous and not planned. However, as the Court of Appeal reminded us in the case of Attorney General's Reference No. 6 of 2004 (Conor Doyle) [2004] NICA 33 at para. [34] "A lack of premeditation does not mitigate the offence in the sense that it makes it less reprehensible. If the offence had been premeditated that would have been an aggravating factor. If it is not premeditated, that merely signifies the absence of that aggravation, not an independent source of mitigation". Mr Gallagher next asked me to give you credit for your age at the time of this offence and I do although the extent of that credit must, as Mr Gallagher conceded, be tempered by the gravity of the offence. He also asked for credit for remorse and again I allow some because the probation officer considers that you do genuinely feel remorse. It must however be observed that despite the clear case against you you sought to brazen out your involvement during your police interviews.

[12] Finally Mr Gallagher seeks credit for your timely plea. I am afraid that I cannot regard it as having been particularly timely, coming as it did some 20 months after the murder and only when your trial was about to begin. Nevertheless, everyone who pleads guilty to a criminal offence and thereby spares witnesses the ordeal of giving evidence and family members the pain of hearing distressing details described is entitled to a significant allowance for that fact.

[13] Therefore, taking into account all the matters that are material to arriving at the minimum term in your case, I consider that it should be one of 12 years, the equivalent of a determinate sentence of 24 years, before you can first be considered for release. That minimum term will include the time that you have spent in custody while on remand.

[14] I now deal with the other counts to which you have pleaded guilty and can do so in reasonably short compass as the facts have been fully outlined to the court by prosecuting counsel and because in your case they pale into relatively less significance by reason of the gravity of the first count and the sentence attributable to it:

On Count 2, the affray that surrounded the murder, I sentence you to 5 years.

On Count 6, the possession of an offensive weapon, namely a blade on 11 September 2007 during the encounter with Miss Gilmore in the alleyway between Springhill and Whiterock, I sentence you to 2 years.

On Count 8, making a threat to kill Brendan Rice on 8 September 2007 at Springhill Drive, I sentence you to 2 years.

On Count 9, possessing an offensive weapon, namely a knife on the same date and at the same place I sentence you to 2 years.

On Count 10, assaulting Miss Gilmore and occasioning her actual bodily harm between September and December 2006, I sentence you 2 years.

On Count 11, possessing offensive weapons, namely a hammer and screwdriver on the same date and at the same place I sentence you to 2 years.

Finally, on Count 12, assault upon Paul McGoran occasioning him actual bodily harm on the same date and at the same place, I sentence you to 2 years.

[15] All the sentences that I have imposed on the counts other than the first shall be concurrent with each other and served concurrently with the minimum period that I have imposed on Count 1.

[16] I now turn to you Crossan. You have pleaded guilty on Count 2 to affray and in Count 7 to possessing an offensive weapon, namely a knife, both offences being committed during the incident surrounding the death of Mr Holland. You were 17 at the time of these events and had already accumulated previous convictions for theft, handling stolen goods, shoplifting, assault with intent to resist arrest, possession of a class C drug, a number of motoring offences including hijacking, assault on police, criminal damage and theft. You also dropped out of the school system at an early age possibly due, at least in part, to the fact that, like McKee, you have been found by Dr McCartan, the Clinical Psychologist, to have an IQ in the "borderline category" or within the bottom 4% of the population. It seems that you found difficulty with school work but in any event you joined the ranks of the unemployed and disaffected youth hanging round corners, drinking and using illegal drugs. It seems that you came to the notice of paramilitary elements and that, as a result, you and your family had to leave their home in

west Belfast and move elsewhere. You however continued to consort with your former associates and your mother was unable to control you.

[17] In July 2007 a probation report correctly identified you as at a high risk of re-offending and observed that unless you addressed your misuse of alcohol and drugs you would continue to pose a risk of harm to yourself and the public. Only the day before the events in Norfolk Drive you had been released from custody, an indication of how little you had learned while in the Young Offenders' Centre. At the time of the present offences you had just begun the probation element of that sentence. The probation report on you in this case indicates that a custody probation order might be a suitable sentence in your case with a number of additional conditions including electronic tagging. I consider that you meet a criterion laid down by the Court of Appeal for the imposition of such a sentence, namely the need to protect the public and I would have been willing to consider imposing such a combined sentence except that Mr Magee SC, your Senior Counsel, has informed me that you would not be willing to consent to electronic tagging. In agreement with the probation report I consider that such a condition would be indispensable if such an order were to have any prospect of working and therefore, with regret, I have had to discard the possibility of a sentence of custody followed by a period of probation.

[18] I am therefore driven to the only realistic alternative which is a custody sentence simpliciter. I have been helpfully referred to a number of cases involving sentencing for the offence of affray although as the Court of Appeal observed in Attorney General's Reference No. 1 of 2006 [2006] NICA 4 at para [25]:

“Because of the infinitely varying circumstances in which affray may occur and the wide diversity of possible participation of those engaged in it, comprehensive rules as to the level of sentencing are impossible to devise.”

That Court did however identify a number of general principles:

- (i) Active, central participation will attract greater punishment than peripheral or passive support.
- (ii) The use of weapons will generally merit the imposition of greater penalties.
- (iii) The extent to which members of the public have been put in fear will also be a factor.

(iv) A distinction should be drawn between an affray that has ignited spontaneously and one which has been planned.

(v) Heavier sentences should in general be passed where the affray consists of a number of incidents rather than a single self-contained episode.

[19] Applying those factors to your involvement in the present case it is accepted that you were a central participant in these events and you were clearly armed with a knife that you waved at the neighbour with the hurley bat in what Mr Murphy QC described as “a moving stand-off”. The prosecution accepted that the affray arose in a spontaneous manner and that it comprised of a single incident. While you were not involved in this killing, I take account of the fact that Mr Holland died in this affray. You pleaded guilty to this charge as soon as the prosecution decided that it would be proper to accept it rather than proceed with the murder count. Weighing these circumstances, some of which are mitigating and others aggravating, I have concluded that the proper sentence to impose upon you on Count 2, affray, is one of 4 years.

[20] In relation to the seventh count, the possession of an offensive weapon namely a knife, I sentence you to 2 years. The two sentences will be concurrent.

[21] Finally I come to you N. You were born in January 1992 so you were 15½ in September 2007. You are still only 17. Your involvement in this matter has been most unfortunate for you. Before it happened you were a pupil at a leading comprehensive school and though not academically gifted had been working hard for your GCSE examinations. You were expected to pass in 4 or 5 subjects. It is clear that you liked school and the company of your friends there. As a result of this incident you had to move away and attend another school with the result that you only attained 2 GCSE passes. Thereafter you enrolled in a training programme which again you were forced to leave when your identity was discovered by other students.

[22] The probation report in your case indicates that you have no previous convictions and had not come to the attention of the police before this night. I am satisfied that you are genuinely remorseful for what occurred and for your part in it and that you have been able to explain to the probation officer your real understanding of the devastating impact that Mr Holland’s death has had upon his family.

[23] Your behaviour on this evening was utterly disgraceful. Apparently you were out drinking with your loutish friends because your parents were on holiday and you had been left unsupervised. You have admitted your part in this affray including pushing the van door against Mr Holland and,

like Crossan, pleaded guilty to the charge of affray as soon as the prosecution accepted that it properly met your degree of involvement in the matter.

[24] Having regard to the aggravating and mitigating factors for the offence of affray earlier discussed I am satisfied that your level of involvement was much less serious than that of the other two defendants. The Probation Service has assessed that you are at low risk of re-offending and are not assessed as being at a risk of causing serious harm to others. You have spent two short periods on remand in custody while you did not have bail and I have no doubt you will have found that a chastening experience. Indeed, as the probation officer comments, I feel sure that the enormity of the consequences of this incident in which you were involved will remain with you for the rest of your life.

[25] I cannot see that any useful purpose would be served by now sending you into custody. I feel that you have the capacity to make something of yourself and that, with appropriate help and guidance, you will do so. The probation officer suggests that you would benefit from a period of probation supervision with added conditions and I accept that advice. This is not a case that could be met by a youth conferencing order. I therefore propose to offer you the opportunity to have a probation order made in your case for a period of 2 years during which you would be under the supervision of a probation officer. There would be two additional conditions attached to the order namely:

(i) "She shall reside in accommodation approved by the supervising officer".

(ii) "She shall participate in a victim awareness programme and other identified offence-focused work as directed by the supervising officer".

Before I ask you whether you wish to accept the offer of such a probation order I want to make it clear to you that probation will not be an easy option. You will have to attend all meetings and courses as directed by your supervising officer and comply with all requirements. If you fail to do so you will be in breach of the order and will be brought back before the court and dealt with. Having heard what I have said do you wish to accept the probation order? Very well then, on each of the two counts to which you have pleaded guilty; affray in Count 2 and common assault in Count 3, I sentence you to 2 years' probation with the two additional conditions that I have mentioned. You now have the chance to get your life back on track, I hope that you will take it.